IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22012 of 2004

Between:

Devatha Vijaya, W/o. China Kondaiah,
R/o. Stonehousepet, Nellore, Nellore District.

..... PETITIONER

AND

1 The APSRTC, Rep. by its Managing Director, Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Nellore Region, Nellore, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly on e in the nature of Writ of Mandamus declaring the proceedings No.02/122(10/2001-RM (NLR). Dt. 23-11-2004 of the Regional Manager, APSRTC, Nellore, the 2nd respondent herein as illegal, unjust, arbitrary, contrary to law, violative of Articles 14, 19 (1)(g) of the Constitution of India and violative of principles of natural justice and accordingly set aside the same, consequently holding that the petitioner is authorized to sell the approved items in the Bakery stall No.14 in terms of Cir.No.43/2001-OPD(C), dt. 13-9-2001 of the respondent-Corporation.

Counsel for the Petitioner:MR.S.V.MUNI REDDY

Counsel for the Respondents: MR.R.MANMADHA REDDY

The Court made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 22012 of 2004

O R D E R:

This writ petition is filed to issue a writ, order or direction particularly one in the nature of writ of Mandamus declaring the proceedings No.02/122(10)/2001-RM(NLR), dt. 23.11.2004 of the Regional Manager, APSRTC, Nellore as illegal, unjust and contrary to law with a consequential direction to the respondents to permit the petitioner to sell the approved items in the Bakery Stall No.14 in terms of Cir.No.43/2001-OPC (C) dt. 13.9.2001.

The brief petition averments that are necessary for disposal of the present writ petition may be stated as follows:

In pursuance of tender notification issued by the 2nd respondent, the petitioner became the highest bidder in respect of Stall No.14 of APSRTC Complex, Nellore for selling the authorized and approved bakery items. A deed of licence was entered between the 2nd respondent and the petitioner for a period from 1.8.2001 to 31.7.2004. Accordingly, in pursuance of the agreement of deed of licence he started his business w.e.f. 1.8.2001. While so, the 2nd respondent issued a show-cause notice dated 3.6.2004 stating that as per condition No.3 of the agreement the licencee shall sell in the bakery stall the items approved by the licensor. By impugned proceedings it was made clear that the licensee shall once again enter into an agreement afresh for the extended period of licence and the licensee shall comply with the terms and conditions of the new agreement during extended period of licence. Vide office proceedings dated 20.7.2003, the licence is extended by a further period of three years from 1.8.2004 to 31.7.2007. He paid the balance security deposit of Rs.25,279-20ps. on 26.7.2004 in addition to the security deposit already made. He made a representation to enter into fresh agreement with authorization to sell bakery items.

Then the 2nd respondent issued the impugned proceedings dated 23.11.2004. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contended that the Circular No.43/01 dated 13.9.2001 is applicable in respect of the conditions running Stall No.14 and as per the Circular dated 13.9.2001, the petitioner is permitted to sell Khara, which is a bakery item and therefore the impugned proceedings are illegal, unjust and therefore he prays to quash the same.

On the other hand, learned counsel for the respondents contended that the administrative instructions cannot give any legal right to the petitioner. As per the deed of licence the petitioner is entitled to sell only bakery products in Stall No.14 and there are no grounds to quash the proceedings. Therefore, he prays to dismiss the writ petition.

The facts are in narrow compass. The petitioner was declared as highest bidder in respect of Stall No.14 in A.P.S.R.T.C. Complex, Nellore for selling bakery items in pursuance of a deed of licence entered in between the petitioner and the 2nd respondent for a period of three years from 1.8.2001 to 31.7.2004. Thereafter, by virtue of proceedings dated 20.7.2004 issued by the 2nd respondent, the licence period of the petitioner has been extended for a further period w.e.f. 1.8.2004 to 31.7.2007. It is also not in dispute that in pursuance thereof the petitioner made security deposit of Rs.25,279-20ps. on 26.7.2004 in addition to the security deposit already made. It is also not in dispute that the petitioner made a representation to the 2nd respondent on 12.8.2004 requesting the 2nd respondent to make a special mention of the items to be sold by her in her bakery stall No.14 as per the list given in Circular No.43/2001-OPC dated 13.9.2001 in the fresh agreement, for which the impugned proceedings have been issued stating that the petitioner should confine to sale of items as approved by the Office letter dated 14.5.2002. As per the said Office letter, a list of bakery items which the petitioner can sell in Stall No.14 was given.

The award of contract or licence, whether it is by a private party or a public body, is essentially a commercial transaction. It is well settled now that the courts can scrutinize the contracts by the Government or its agencies in exercise of its powers of judicial review to prevent arbitrariness or favouritism. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth in ***Tata Cellular v. Union of India***. After examining the entire case law, the following principles have been reduced:

> "(1) The modern trend points to judicial restraint in administrative action.
>
> (2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.
>
> (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
>
> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
>
> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure".

Bearing the above principles in mind, it has to be seen whether the case of the petitioner falls in any of the grounds as enumerated hereinabove. It is not the case of the writ petitioner that to show some favouritism the impugned proceedings have been issued. So also, it is not the case of the petitioner that there was complete arbitrariness on the part of the 2nd respondent in directing the petitioner to sell particular items. As per the Annexure-I attached to Circular dated 13.9.2001, Khara is one of the items to be sold as a bakery product in the bakery stall. This Circular is only in the form of instructions to be followed by the authorities of the respondent-Corporation in respect of awarding contracts of licence to run the stalls. In the year 2002, a licence holder of Stall No.13 filed W.P. 5424 of 2002. By its order dated 27.3.2002 this court issued direction to the respondent-Corporation to consider and dispose of the representation of the petitioner therein. In pursuance of the said direction, the Regional Manager passed an order stating that the permission for sale of khara items in Bakery stalls is not applicable to the bakery stall. A copy is also marked to the petitioner while marking copy to the licence holder of Shop No.13, who is the petitioner in W.P.5424 of 2002. As the writ petitioner violated the licence conditions, a show-cause notice was issued for unauthorized selling for which a reply was given. The only dispute is whether the respondent-Corporation is justified in issuing the impugned proceedings.

It was made clear to the petitioner vide letter dated 14.5.2002 that the petitioner is permitted to sell only 15 items as mentioned in the said proceedings in the bakery stall. Khara is not one of the items to be sold in the bakery stall. The said proceedings is not challenged by the petitioner at any point of time. For the

extended period of licence the petitioner is required to sell only the items as mentioned in the proceedings of the respondentNo.2 dated 14.5.2002. Therefore, the petitioner is bound to sell the only products which are defined in the said circular. Though the said proceedings is contrary to the circular instructions as khara items is one of the items to be sold in the bakery stall, but the circular instructions issued by the respondent-Corporation do not give any right to the petitioner in view of the fact that the proceedings dated 14.5.2002 is not under challenge. Therefore, the petitioner is bound by the proceedings of the Regional Manager, Nellore dated 14.5.2002. In such view of the matter, the petitioner is required to enter into fresh agreement as the original licence which expired by 31.7.2004 is extended for a further period of 3 years from 1.8.2004 to 31.7.2007.

The impugned order does not suffer from any legal infirmities so as to call for interference by this court. Since the matter comes purely based upon a concluded contract, the same cannot be challenged unless it is shown to have been made by favouritism or that there was arbitrariness on the part of the respondents. In the absence of these aspects, this court is of the opinion that the impugned proceedings does not suffer from any legal infirmities so as to call for interference by this court.

The writ petition is devoid of merit and it is accordingly dismissed at the stage of admission.

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K.C. Bhanu, J.

Date: 07--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, APSRTC , Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Nellore Region, Nellore, Nellore District.

3. 2CD copies